



ORGANIZATION FOR THE PROTECTION  
AND ADVANCEMENT OF SMALL  
TELEPHONE COMPANIES

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EX PARTE NOTICE

April 18, 1996

RECEIVED

APR 18 1996

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, NW  
Washington, DC 20554

EX PARTE OR LATE FILED

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: CC Docket No. 96-45

Dear Mr. Caton:

On April 17, 1996, representatives of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) met with the Accounting and Audits Chief, Ken Moran. Those individuals present were John Rose (OPASTCO), Lisa Zaina (OPASTCO), and Ken Johnson (OPASTCO).

OPASTCO discussed Sections 251, 254, and 102 of the Telecommunications Act of 1996 and presented a summary (enclosed). Additionally, OPASTCO reviewed cost-based, competitive support allocation mechanisms.

This ex parte notice was filed with the Secretary of the Commission on April 18, 1996.

Respectfully submitted,

  
John N. Rose  
Executive Vice President

cc: Ken Moran

10/10/96 read

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# On the Record

Volume 3, Number 2

March 1996

APR 18 1996

## Sweeping Telecommunications Reform

On February 1, 1996, the House and the Senate passed landmark telecommunications legislation by nearly unanimous votes of 414-16 and 91-5, respectively. President Clinton signed this into law in a ceremony in the Library of Congress on February 8. The passage of this legislation will usher in a whole new world of telecommunications services, regulations and technologies. The landscape will look different as many new players come on the scene and many current players enter new lines of business. This legislation will create new opportunities for small and rural LECs and we are excited about the prospects for the future.

For the OPASTCO membership, the most dramatic occurrence will be the opening of the local loop and the development of competition. Within 6 months after the enactment of the Telecommunications Act of 1996, the FCC is required to begin proceedings to promulgate regulations to carry out the law's interconnection requirements. These requirements were designed to encourage the development of competitive markets.

There are three different levels of requirements under the interconnection section. The first is the general duty to interconnect which applies to all telecommunications carriers<sup>1</sup>. All telecommunications carriers are required to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.

The next layer of requirements is applied to all local exchange carriers.<sup>2</sup> Characterization as a local exchange carrier subjects one to tougher requirements than those applied to telecommunications carriers. The following requirements apply to local exchange carriers:

**(RESALE)** The duty not to prohibit and not to impose unreasonable or discriminatory conditions or limitations on the resale of its telecommunications services.

**(NUMBER PORTABILITY)** The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

**(DIALING PARITY)** The duty to provide dialing parity, to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone

numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

**(ACCESS TO RIGHTS-OF-WAY)** The duty to afford access to the poles, ducts, conduits, and rights-of-way to competing providers of telecommunications services on rates, terms and conditions that are consistent with Section 224.

**(RECIPROCAL COMPENSATION)** The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

There are additional requirements placed on carriers that are defined as incumbent local exchange carriers.<sup>3</sup> These additional requirements are:

**(DUTY TO NEGOTIATE)** The duty to negotiate in good faith, in accordance with section 252, the particular terms and conditions of agreements to fulfill the duties to interconnect. The requesting carrier is also required to negotiate in good faith.

**(INTERCONNECTION)** The duty to provide, to any requesting telecommunications carrier, interconnection with the local exchange carrier's network for the transmission and routing of telephone exchange service and exchange access; at any technically feasible point within the carrier's network. The interconnection must be at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of section 251 and section 252.

**(UNBUNDLED ACCESS)** The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point at rates, terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of the legislation. The unbundling shall be such that the requesting carrier can combine such elements in order to provide such telecommunications service.

**(RESALE)** The duty to offer, for resale at wholesale rates, any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. The incumbent LEC cannot impose unreasonable or discriminatory conditions or limitations on the resale of such telecommunications service.

**(NOTICE OF CHANGES)**

The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that LEC's facilities or networks.

**(COLLOCATION)** The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier. However, the carrier may provide for virtual collocation if the LEC demonstrates that physical collocation is not practical for technical reasons or because of space limitations.

These can be overwhelming requirements for small and rural LECs. However, OPASTCO and its Rural Telephone Coalition (RTC) partners the National Rural Telecom Association (NRTA) and the National Telephone Cooperative Association (NTCA) were successful in securing exemption, suspension and modification provisions for rural local exchange carriers. <sup>4</sup> The interconnection provisions to which incumbent LECs are subject will not apply to rural LECs until that rural LEC has received a bona fide request for interconnection, services, or network elements, and the State commission has determined that the bona fide request is not unduly economically burdensome, is technically feasible, and is consistent with the universal service provisions of the legislation. This exemption

shall not apply in the event that a cable operator providing video programming in a rural LEC's service area requests interconnection to provide telecommunications services in the area where the rural LEC provides videoprogramming. This limitation on the exemption will not apply in the cases where the rural LEC provided video programming prior to enactment of the law.

In addition to the exemption, there are modifications and suspensions of the interconnection requirements that are available to small and rural LECs. A LEC that has fewer than 2% of the Nation's subscriber lines installed in the aggregate nationwide may petition a state commission for suspension or modification of the requirements placed on both local exchange carriers, and incumbent local exchange carriers. (Please note that the rural LEC exemption applies only to those interconnection requirements that the law places on the incumbent LECs. The exemption does not exempt a rural LEC from those interconnection provisions required of LECs that are not incumbents.) The state is required to grant the suspension or modification if it is consistent with the public interest, convenience and necessity and is necessary to avoid: (1) a significant adverse economic impact on users of telecommunications services generally; (2) imposing a requirement that is unduly economically burdensome; or (3) imposing a requirement that is technically infeasible. The

state must act on a petition for suspension or modification within 180 days of receipt. In the interim, it will suspend application of the requirement.

This legislation also removes the barriers to entry by competitive carriers. Essentially this provision prohibits a state or local statute or regulation, or other state or local legal requirement, from prohibiting or having the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

However, the state is permitted to impose requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers, as long as such regulations are competitively neutral. The FCC, after notice and comment, can preempt any of these state or local laws or regulations to the extent that preemption is necessary to correct such violation or inconsistency. Moreover, 15 months after the date of enactment of this legislation, the FCC is required to complete a proceeding for the purpose of identifying and eliminating market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services.

Despite the general prohibition on states' flouting federal mandates regarding competition, there is special consideration given to state authority in rural areas. The law preserves some state authority over competitive entry in rural areas. In rural markets (areas served by rural LECs) it is not a violation for a state to require a telecommunications carrier to meet the requirements for designation as an eligible carrier<sup>5</sup> for that area before being permitted to provide service. There are exceptions to this reservation of state authority. It does not apply in a rural area served by a LEC that has obtained an exemption, suspension, or modification of the resale requirements placed on incumbent LECs if the exemption, suspension, or modification prevent the competing carrier from satisfying the requirements of an eligible telecommunications carrier. Second, the provision does not apply to a provider of commercial mobile radio services (CMRS). This CMRS provision essentially maintains the status quo. The reservation of state

authority in rural areas will give states the opportunity to make sure that the competitors in rural areas do not cherry pick.

Within one month after the President signs this legislation into law, the FCC is required to establish a Joint Board to recommend changes to its regulations in order to implement the universal service section of the legislation, including the definition of universal service. This Joint Board will be different than those established in the past, because the law will require one member to be a State-appointed utility consumer advocate. Nine months after notice and public comment, the Joint Board must make its recommendations to the FCC. Then, the Commission is required to implement a single proceeding to implement the Joint Board's recommendations and must complete this proceeding within 15 months after the date of enactment (May 8, 1997).

The law establishes principles upon which the Joint Board and the Commission must base their policies. The law states that quality services should be available at just, reasonable, and affordable rates. The federal and state funding mechanisms that support universal service funding must be specific, predictable, and sufficient, and all telecommunications carriers must make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service. Access to advanced telecommunications and information services should be provided in all regions of the country, and rural areas should have access to services that are reasonably comparable to those services provided in urban areas and at rates that are reasonably comparable to rates charged for similar services in urban areas. The policies also include access to advanced telecommunications services for schools, health care facilities, and libraries. The Joint Board and the Commission can establish other principles that are necessary and appropriate for the protection of the public interest, convenience, and necessity, and that are consistent with the law. The RTC successfully encouraged the legislators to understand that universal service is an evolving concept and should not be static. As such, the law states that universal service is an evolving level of telecommunications services, taking into account advances in telecommunications and information technologies and services. In establishing the definition of those services that are supported by the Federal universal service fund, the FCC and the Joint Board are required to determine the extent to which such telecommunications services: (1) are essential to education, public health, and public safety; (2) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential subscribers; (3) are being deployed in public telecommunications networks by telecommunications carriers; and (4) are consistent with the public interest, convenience, and necessity. Just as the definition is evolving, the Commission's review will be periodic to keep pace with changes. In order to support the federal fund, all carriers that

provide interstate services are required to contribute to the federal fund on an equitable and nondiscriminatory basis. The FCC may exempt a carrier or a class of carriers from this requirement if the telecommunications activities are limited to such an extent that the level of that carrier's contribution to the preservation and advancement of universal service would be insignificant.

One issue that is very important for OPASTCO members is who should receive universal service funding. Many have discussed that funding should be made available to all carriers, and even customers. An attempt to institute a voucher system found widespread opposition on the Senate floor in June. Under the provisions in the law, only those carriers that have satisfied the requirement of eligible telecommunications carriers will have access to funding. Eligible carriers can use this funding only for the provision, maintenance, and upgrading of facilities.

This law encourages designation of more than one eligible carrier in a telephone service area. Upon request and consistent with the public interest, convenience and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a designated service area. An eligible carrier can also request to relinquish its eligible carrier status if there is another eligible carrier in its area. The state commission shall require the remaining eligible carrier to ensure that all customers served by the relinquishing carrier will continue to be served and will require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible carrier. This relinquishment process, during which such purchase or construction must be completed, shall not exceed one year.

Besides the Federal universal service system, the new law allows the states to adopt regulations to preserve and advance universal service so long as they are not inconsistent with the Commission's rules. The specific, predictable, and sufficient mechanisms that support the state standards cannot burden or rely on Federal universal service support mechanisms.

The issue of geographic rate averaging has always been important to OPASTCO. The RTC engaged in a hard-fought battle that resulted in language requiring the FCC to adopt rules (within 6 months of enactment of this legislation) to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. These rules must also require that a provider of interstate interexchange telecommunications services provide such services to its subscribers in each state at rates no higher than the rates charged to its subscribers in any other state. At the

11th hour, the RTC engaged in a battle with members of the House because they had limited this requirement to residential rates. The RTC was fortunate to prevail on this issue. If we had not, the rates charged to rural businesses for toll usage most probably would have increased significantly. This would have been disastrous for rural development.

The law also includes infrastructure sharing provisions that we have worked to have included in legislation for quite a long time. In fact, we were supportive of legislation that was introduced several years ago that would have required infrastructure sharing by the BOCs with their neighboring independents. According to the law, within one year after its enactment (February 8, 1997), the Commission must prescribe regulations which require incumbent LECs to make available to any qualifying carrier<sup>6</sup> the public switched network infrastructure, technology, information, and telecommunications facilities and functions as may be requested for the purpose of enabling the qualifying carrier to provide telecommunications services, or to provide access to information services, in the service area in which it is designated as an eligible telecommunications carrier. A LEC that has entered into an infrastructure sharing agreement shall provide timely information on the planned deployment of telecommunications services and equipment, including any software or software upgrades integral to the use or operation of such telecommunications equipment, to each party with which it has an agreement. The law sets certain parameters under which the FCC must prescribe the infrastructure sharing regulations. The carrier that is offering the infrastructure must make available the tariffs or contracts under which the arrangements are made. Nothing in the law requires the offering LEC to take any action which is economically unreasonable or contrary to the public interest. The FCC regulations must permit, but shall not require, the joint ownership of the facilities by the LEC and the qualifying carrier. The LEC is not to be considered a common carrier for hire with respect to any infrastructure, technology, information, or facilities that it makes available to a qualifying carrier. The terms and conditions under which the LEC makes the infrastructure available to the qualifying carrier must be on just and reasonable terms in order to allow the qualifying carrier to fully benefit from the arrangement. The FCC must also establish conditions that promote cooperation between the LEC and the qualifying carriers. The qualifying carrier cannot use the infrastructure which it shares with the LEC to compete against that LEC in that LEC's service area.

Many people have referred to this legislation as the lawyers' full employment act. This is not far from the truth. Our small and rural LEC issues are just a small piece of this law which addresses issues that range from separations and access to pornography on the Internet. And the common carrier issues are not the only issues which affect OPASTCO members. Many OPASTCO members provide

video programming and therefore the provisions under Title III, Cable Services will affect them also. In fact, rate curbs for small cable systems under 50,000 customers are lifted upon enactment.

One of the issues that has raised a great deal of concern for OPASTCO members is the option to joint venture or buy-out a cable programmer in their service areas. Under the law, no local exchange carrier may purchase or otherwise acquire directly or indirectly more than a 10% financial interest, or any management interest, in any cable operator providing cable service within the LEC's telephone service area. Furthermore, a LEC and a cable operator whose telephone service area are in the same market may not enter into any joint venture or partnership to provide video programming directly to subscribers or to provide telecommunications services within such market.

There are exceptions to the prohibitions on purchasing and joint venturing with cable systems. Most of these exceptions involve rural areas. A LEC may acquire a controlling interest in, management interest in, or enter into a joint venture or partnership with the operator of a cable system or facilities located in its telephone service area<sup>7</sup> to the extent that the system only serves incorporated or unincorporated places or territories that have fewer than 35,000 inhabitants and are outside urbanized areas. Moreover, the system in which the LEC has an interest must serve less than 10% of the households in the area. A LEC may also acquire, with the concurrence of the cable operator, the use of that part of the transmission facilities of a cable system which extends from the last multi-user terminal to the premises of the end user. A LEC may also obtain a controlling interest in, or form a joint venture or partnership with, or provide financing to a cable system, if the cable system is not owned by any of one of the 50 cable system operators with the most subscribers, operates in a television market that is not in the top 25 markets, and the cable market has more than one cable operator. Under this exception, the subject cable system and the cable system with the most subscribers must have held on May 1, 1995, cable television franchises from the largest municipality in the television market and the boundaries of these franchises must have been identical on that date. There is also another exemption for cable systems that serve no more than 17,000 cable subscribers of which no less than 8000 live within an urban area and no less than 6000 live within an urbanized area. The cable system must operate in a television market that was not in the top 100 markets as of June 1, 1995 and the cable system cannot be owned by, or under common ownership or control with, any of the 50 largest cable system operators in existence on June 1, 1995. Small cable systems in nonurban areas also are an exception to the no joint venture, buy-out rule. This exception applies to non-Tier 1 LECs that provide service in study areas serving no more than 20,000 cable subscribers as long as no more than 12,000 of those

subscribers live within an urbanized area as defined by the Census. Most OPASTCO members should be able to find a place for themselves in one of these exceptions.

In addition to the exceptions, there are waivers from the general prohibition. The Commission may waive the restrictions if the Commission determines that the affected cable operator would be subjected to undue economic distress by enforcement of the prohibition because of the market served by the affected cable system or facilities used to provide telephone exchange service. The restriction may also be waived if the system or facilities would not be economically viable if the prohibition were enforced and the anticompetitive effects of the proposed transaction are clearly outweighed by the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. Additionally, the local franchising authority must approve of the waiver. For those rural LECs that do not satisfy an exemption, these waivers are another opportunity.

Another concept embraced by this law is regulatory reform, most notably regulatory forbearance. The Commission is required to forbear from applying any regulation or provision of the law if it determines that: (1) enforcement of the regulation or provision is not necessary to ensure that the charges, practices, classifications, and regulations by, for, or in connection with the telecommunications carrier or service are just and reasonable and not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. Underlying this determination is the consideration as to how forbearance will promote competition and will enhance competition among providers of telecommunications services. If the Commission determines that forbearance will promote competition, they can use this as the basis to forbear. Furthermore, the state commissions cannot enforce any regulation or provision from which the FCC has decided to forbear.

How does the Commission reach a decision to forbear from applying any regulation or provision of this Act? First, any telecommunications carrier or class of carriers must first submit a petition to the Commission requesting that it forbear from applying its regulations promulgated pursuant to the directives of this legislation. The Commission has one year to consider this decision. The petition is considered granted if the Commission does not deny it within one year, unless the Commission has extended the time during which it will review the petition.

In addition to the ability to forbear from applying certain requirements, the FCC is required to have a biennial review of its regulations. The Commission is required to review all regulations issued under the Telecommunications

Act of 1996 which apply to the operations or activities of any provider of telecommunications services and determine whether such regulations are no longer necessary or in the public interest as a result of meaningful economic competition between providers of these services.

When AT&T was dismantled in the antitrust proceedings in the early 1980's, many said that the small and rural LECs should not be concerned because the break-up would be transparent to their operations. As we all know, there was a lot of fall-out that affected small and rural LECs. Ironically enough, even the lifting of the MFJ restrictions by the Telecommunications Act of 1996 will not be transparent to the operations of the small and rural LECs.

Judge Greene's Court, for all intents and purposes, lifted the information services ban. However, it did not cede to lifting the interexchange and manufacturing restrictions. The Telecommunications Act of 1996 finished that job. The interLATA provisions treat in-region, out-of-region, and incidental interLATA services differently. Of course, the most stringent requirements are placed on the in-region interLATA services. For the in-region services, the BOC must submit a request to the FCC for provision of in-region services, and the FCC is required to consult with the Attorney General's office and the state in which the BOC would like to provide these services. Within 90 days of the request, the FCC must authorize or deny the provision of the in-region services. In its most simple form, the parameters under which a BOC can provide in-region services are if it faces facilities-based competition, and if it satisfies specific interconnection requirements. However, if the BOC does not receive a request for access, the law still allows it to satisfy the requirements pursuant to a specific timetable. BOCs can offer out-of-region interLATA services upon enactment of the legislation.

A provision in this section which is quite important for OPASTCO members is one which allows the BOCs to provide incidental interLATA services upon enactment of the legislation. The law categorizes signaling information used in connection with the provision of telephone exchange services or exchange access by a local exchange carrier as incidental services. Several years ago the BOCs were permitted to carry limited signalling for independent LECs. This provision merely allows them to continue providing this service to independent LECs. The BOCs are also permitted to provide the interLATA provision of commercial mobile services pursuant to Commission guidelines.

The law allows the BOCs to manufacture telecommunications equipment pursuant to Commission regulation. The law includes safeguards for BOC manufacturing activity. Under the manufacturing relief, the BOC is also required to provide to interconnecting carriers that provide telephone exchange service, timely information on the planned deployment of telecommunications equipment.

Besides provisions that explicitly affect rural LECs by exception or application, there are other provisions in the law that affect OPASTCO members. One such provision is the privacy of customer and carrier information. Every telecommunications carrier has the obligation to protect the confidentiality of proprietary information of other telecommunications carriers, equipment manufacturers, and customers. Furthermore, all telecommunications carriers that receive customer proprietary network information (CPNI)

by virtue of their provision of telecommunications services, can only use the CPNI in their provision of telecommunications service from which such information is derived or services used in the provision of telecommunications service. Pole attach rules are also changed by this law. The new law establishes a new rate formula charged to telecommunications carriers for the non-useable space of each pole. The rate will be based on the number of attaching entities. Another provision that is important for OPASTCO

members is that which says CMRS providers are not required to provide equal access.

This new law is as comprehensive as many have said. The issues raised in this discussion are the most significant for small and rural LECs. However, there are other provisions which may touch upon the operations of LECs. Moreover, the circle is not complete, and this process is far from over. Now we must go to the regulatory front and work through the FCC process.

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<sup>1</sup>A telecommunications carrier means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services. A telecommunications carrier shall be treated as a common carrier under this Act only to extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

<sup>2</sup>A local exchange carrier means any person that is engaged in the provision of telephone exchange service, or exchange access. This does not include a person if such person is engaged in the provision of commercial mobile service under Section 332(c), except to the extent that the Commission finds that such service should be included in the definition.

<sup>3</sup>An incumbent local exchange carrier is a local exchange carrier that, with respect to an area, on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in that area, and was a member of the National Exchange Carrier Association (NECA).

<sup>4</sup>The definition of a rural local exchange carrier is expansive enough that it should include all OPASTCO members. The term rural telephone company means a local exchange carrier operating entity to the extent that such entity -- (a) provides common carrier service to any local exchange carrier study area that does not include either (1) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Census Bureau, or (2) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Census Bureau as of August 10, 1993; (b) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (c) provides telephone exchange service to any local exchange study area with fewer than 100,000 access lines; or (d) has less than 15% of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

<sup>5</sup>An eligible telecommunications carrier is one that has access to universal service funding. Such a carrier is required to advertise the availability of and charges for, and offer universal service, throughout the entire service area for which the designation is received. (Universal is discussed later in this memo.) It can offer these services through its own facilities or a combination of its own facilities and resale. The state, in most cases, will designate the service area which must be served in order for one to satisfy the requirements of an eligible carrier. In the case of an area served by a rural LEC, the current study area will serve as the service area for the LEC unless the Commission and the states change it after input from the Joint Board.

<sup>6</sup>A qualifying carrier is a telecommunications carrier which lacks economies of scope or scale and offers telephone exchange service, exchange access, and any other service that is included in universal service, to all consumers without preference throughout the service area for which such carrier has been designated as an eligible telecommunications carrier.

<sup>7</sup>This is the area in which the LEC provided telephone exchange service as of January 1, 1993.